

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BUSH INDUSTRIES, INC., : Opposition No. _____
: :
: : Application No. 78/249,420
Opposer, : :
: : Mark: FURNITURE IN MOTION
v. : :
: : Filed: May 14, 2003
SHARUT FURNITURE, INC., : :
: :
Applicant. : :



04-14-2004

U.S. Patent & TMO/TM Mail Rpt Dt. #22

NOTICE OF OPPOSITION

BUSH INDUSTRIES, INC., a Delaware corporation, having a place of business at One Mason Drive, P.O. Box 460, Jamestown, New York 14702-0460 hereinafter referred to as "Opposer") believes that it will be damaged by the registration of the mark FURNITURE IN MOTION, as shown in Application Serial No. 78/249,420 (the "Application"), filed May 14, 2003 for "furniture having a component unit that is movable under consumer control" and hereby opposes the same.

As grounds of opposition, Opposer alleges that:

1. Opposer, BUSH INDUSTRIES, INC., is a Delaware corporation, having its principal place of business at One Mason Drive, P.O. Box 460, Jamestown, New York 14702-0460.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on April 12, 2004.

Maria N. Dupain

(Name of person mailing paper)

Maria N. Dupain

Signature

04/12/04

Date

04/15/2004 JBR00K51 00000087 78249420

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300.00 OP

2. Opposer is the owner of the trademark FURNITURE ON THE MOVE for furniture and retail store services in the field of furniture.

3. Opposer and its affiliates began using the mark FURNITURE ON THE MOVE in the United States at least as early as 2002 for furniture and retail store services in the field of furniture, has used the mark FURNITURE ON THE MOVE continuously since that time, and is still using the mark FURNITURE ON THE MOVE in connection with its goods and services. Bush spends substantial sums to advertise and promote its products and services under the mark FURNITURE ON THE MOVE.

4. Opposer is the owner of United States Trademark Registration No. 2,817,819, registered February 24, 2004 for the trademark FURNITURE ON THE MOVE in International Classes 20 and 35, a copy of which is attached hereto as Exhibit A. The registration is in full force and effect.

5. Because of Opposer's use of FURNITURE ON THE MOVE for the goods and services set forth in Paragraph 2 hereof, purchasers, suppliers and users thereof have come to associate FURNITURE ON THE MOVE with Opposer.

6. On information and belief, based on the Application, Applicant, Sharut Furniture, Inc., is a New York corporation, having a principal place of business at 220 Passaic Street, Passaic, New Jersey 07055.

7. Application No. 78/249,420 was filed May 14, 2003 and seeks registration of the mark FURNITURE IN MOTION for "furniture having a component unit that is movable under consumer control", in International Class 20.

8. Applicant's mark FURNITURE IN MOTION was published for opposition on February 10, 2004. On March 11, 2004, Opposer timely requested an extension of time until April 10, 2004 within which to oppose. April 10, 2004 fell on a Saturday. Therefore, this Notice of Opposition is thus being timely filed on April 12, 2004.

9. Upon information and belief, Applicant has not yet commenced use of the alleged mark FURNITURE IN MOTION. Applicant's use of FURNITURE IN MOTION on or in connection with furniture having a component unit that is movable under consumer control is likely to cause confusion, or cause mistake or will deceive the public into believing that said goods emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

10. Applicant is not entitled to claim, as alleged in the Application, that "no other person, firm, corporation, or association has the right to use the mark in commerce" because Opposer has a right to identify its goods as FURNITURE ON THE MOVE.

11. If the Applicant is permitted to register FURNITURE IN MOTION, Applicant will be in a position to harass and annoy Opposer in offering its goods for sale to the public.

12. 15 U.S.C. §1052(d) bars Applicant's mark from registration.

13. Accordingly, Opposer will be damaged by registration of FURNITURE IN MOTION to Applicant.

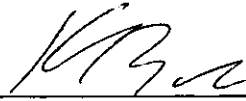
WHEREFORE, Opposer respectfully prays that said Application Serial No. 78/249,420 for registration of the mark FURNITURE IN MOTION as a trademark be refused and that this opposition be sustained.

This Notice of Opposition is submitted in triplicate, together with a filing fee in the amount of \$300.00 as required by 37 C.F.R. §2.6(a)(17). The undersigned hereby authorizes the United States Patent and Trademark Office to charge any additional fees to Deposit Account No. 23-0650 and refund any overpayment in the form of a check.

Dated: April 12, 2004

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
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By  _____

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TTAB

Date April 12, 2004
Case Docket No. 137-001982

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2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3514

04-14-2004
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Sir:

Transmitted herewith for filing with the United States Patent and Trademark Office is:

OPPOSER: Bush Industries, Inc.

FOR: Opposition of Trademark Application No. 78/249,420
for the mark "FURNITURE IN MOTION"

INCLUDING: Transmittal Form in Triplicate; Notice of Opposition (4 pp. in triplicate); check in the amount of \$300.00

The Commissioner of Patents and Trademarks is hereby authorized to charge any additional payment of the fees associated with this communication to Deposit Account No. 23-0650. Please refund any overpayment to Deposit Account No. 23-0650.

The original and two copies of this transmittal sheet are enclosed.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on April 12, 2004.

Maria N. Dupain
(Name of person mailing paper)
Maria N. Dupain 04/12/04
Signature Date

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